extent that such facilities comply with the Commission's regulations concerning such emissions.[149]

123. As stated in the *Conference Report*, Section 332(c)(7)(B)(iv) was adopted to prevent a state or local government or its instrumentalities from basing the regulation of the placement, construction, or modification of personal wireless service facilities directly or indirectly on the environmental effects of RF emissions if those facilities comply with the Commission's RF guidelines.[150] Pursuant to Section 332(c)(7)(B)(v) of the Communications Act, any person adversely affected by any such actions or failure to act may seek relief from a court of competent jurisdiction or from the Commission.[151]

2. Other Relevant Provisions

124. In addition to Sections 332(c)(7)(B)(iv) - (v) of the Communications Act, Congress has given the Commission the express preemption authority pursuant to other sections of the Communications Act. Following the enactment of these provisions, we have received several requests for preemption under these sections, including requests relating to wireless telecommunications deployment and competition. Some of these requests are currently pending before us.[152] The following paragraphs describe the various sections of the Communications Act concerning telecommunications preemption authority and our actions to resolve these important matters.[153]

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[149] 47 U.S.C. § 332(c)(7)(B)(iv).

[150] *Conference Report* at 208-209 (emphasis added).

[151] *See* 47 U.S.C. § 332(c)(7)(B)(v); *see also Conference Report* at 208.

[152] *See, e.g.*, Pleading Cycle Established For Comments on Petitions for Preemption and Declaratory Ruling Regarding the Puerto Rico Telecommunications Act of 1996, *Public Notice*, DA 96-1960 (October 17, 1996); Commission Seeks Comment on Petition for Preemption and Motion for Declaratory Ruling Filed by Western PCS I Corporation, *Public Notice*, DA 96-1211 (released July 30, 1996), *Supplemental Public Notice*, DA 96-1862 (November 8, 1996); Commission Seeks Comment on Petition for Declaratory Ruling Filed by Pittencrief Communications, Inc., *Public Notice*, File No. WTB/POL 96-2 (July 18, 1996); Commission Seeks Comment on Alaska-3 Cellular LLC's Motion For Declaratory Ruling, *Public Notice*, File No. WTB/POL 95-2 (November 1, 1995); US West Files a Petition for Declaratory Ruling, *Public Notice* (September 21, 1995), *Supplemental Public Notice*, DA 96-1641 (September 30, 1996); Commission Seeks Comment on Petition for Declaratory Ruling of the Cellular Telecommunications Industry Association, *Public Notice*, DA 96-2140 (December 18, 1996).

[153] We note that Section 207 of the Telecommunications Act also mandated that the Commission adopt regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite service. *See* Preemption of Local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95-59, *Report and Order and Notice of Proposed Rulemaking*, 11 FCC Rcd 5809 (1996).

125. Section 332(c)(3)(A). As part of the Omnibus Budget Reconciliation Act of 1993,[154] Congress created new Section 332(c)(3)(A) of the Communications Act, which provides:

> no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.[155]

126. Following the enactment of Section 332(c)(3) of the Communications Act, several states petitioned the Commission seeking to be allowed to continue to regulate CMRS providers' rates and these petitions were denied.[156]

127. Section 253. Section 253(a) of the Communications Act provides that:

> No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.[157]

Section 253(d) further provides that if, after notice and opportunity for public comment, the Commission determines that a state or local government has permitted or imposed any such statute or regulation, it shall preempt the enforcement of such statute or regulation to the extent necessary to correct such violation or inconsistency.[158] However, pursuant to Sections 253(b) and (c), state and local governments are free to continue to impose requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. In addition, under Section 253(c), state and local governments may continue to manage the public rights-of-way or require fair and reasonable compensation from telecommunications providers -- on a competitively neutral and nondiscriminatory basis -- for use of public rights-of-way, if the compensation required is publicly disclosed by such

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[154] Pub. L. No. 103-66, 107 Stat. 312 (1993).

[155] 47 U.S.C. § 332(c)(3)(A)(emphasis added).

[156] *See, e.g., Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut*, 10 FCC Rcd 7025 (1995); *affirmed, Connecticut Department of Public Utility Control v FCC*, 78 F. 3d 842 (2nd Cir. 1996); *In re Petition of New York State Public Service Commission to Extend Rate Regulation*, 10 FCC Rcd 8187 (1995).

[157] 47 U.S.C. § 253(a).

[158] *See* 47 U.S.C. § 253(d).

government.[159] A number of requests for preemption pursuant to Section 253 of the Communications Act are pending before the Commission,[160] and the Commission has acted on two cases involving wireline telephone providers.[161]

128. Section 332(c)(7)(B). As noted above, Section 332(c)(7)(B)(i) of the Communications Act provides a method for adversely affected parties to seek relief from a court of competent jurisdiction if a state or local regulation concerning the siting of personal wireless facilities unreasonably discriminates among providers of functionally equivalent services; or has the effect of prohibiting the provision of personal wireless services.[162] In addition, state and local governments are required to "act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed . . . taking into account the nature and scope of such request."[163] Decisions issued by state and local governments that "deny a request to place, construct, or modify personal wireless service facilities, shall be in writing and supported by substantial evidence contained in a written record."[164]

129. Several parties have availed themselves of this remedy. In *BellSouth Mobility, Inc., v. Gwinnett County*,[165] a federal district court found that a local board of commissioners' decision denying an "application for tall structure" to construct a cellular communications monopole was not supported by substantial evidence as required by Section 332(c)(7)(B)(ii) of the Communications Act. The Court stated that it "could not conscientiously find that the evidence supporting the board's decision to deny plaintiffs a tall structure permit is substantial. On the contrary, the court finds that the record evidence supports plaintiff's application."[166]

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[159] *See* 47 U.S.C. § 253(b) & (c).

[160] *See supra,* footnote 152.

[161] *See* Classic Telephone, Inc., *Memorandum Opinion and Order*, FCC 96-397 (released October 1, 1996), review pending in *City of Bogue et al. v. FCC*, Case No. 96-1498, D.C. Cir., filed Nov. 25, 1996; *see also* Classic Telephone, Inc. Petition for Preemption, Declaratory Ruling and Injunctive Relief, CCBPol 96-10 (filed Dec. 13, 1996); New England Public Communications Council Petition for Preemption Pursuant to Section 253, *Memorandum Opinion and Order*, FCC 96-470 (released December 10, 1996); AB Fillins, *Memorandum Opinion and Order*, FCC 97-238 (released August 1, 1997).

[162] 47 U.S.C. § 332(c)(7)(B)(i).

[163] 47 U.S.C. § 332(c)(7)(B)(ii).

[164] 47 U.S.C. § 332(c)(7)(B)(iii).

[165] *BellSouth Mobility, Inc., v. Gwinnett County*, 944 F. Supp. 923 (N.D. Ga. 1996).

[166] *Id.* at 928.

Accordingly, the Court found in favor of the cellular providers and ordered the local board to grant the application for tall structure.[167]

130. In *Sprint Spectrum, L.P. v. City of Medina*,[168] a federal district court found that a city's six month moratorium on the issuance of new special use permits for wireless communications facilities did not violate the Telecommunications Act. The plaintiff argued that the moratorium violated Section 332(c)(7)(B)(i)(II), which prohibits regulations that prohibit or have the effect of prohibiting the provision of personal wireless services.[169] The Court disagreed, finding that the moratorium was not a prohibition on wireless facilities, nor did it have a prohibitory effect. Rather, it is a short-term suspension of permitting while the City gathered information and processed applications.[170] The plaintiffs also argued that the moratorium violated Section 332(c)(7)(B)(ii) which requires that applications be processed within a reasonable period of time.[171] However, the Court found that there was nothing in the legislative history of the Telecommunications Act to suggest that "Congress, by requiring action 'within a reasonable period of time,' intended to force local government procedures onto a rigid timetable where the circumstances call for study, deliberation, and decision-making among competing applicants."[172] The Court also disagreed with the plaintiff's contention that the moratorium violated Section 332(c)(7)(B)(i)(I) in that it discriminated among providers of functionally equivalent services.[173] The Court found that no discrimination was shown and that the plaintiff was seeking to enter the locality more than ten years after other wireless providers began business there.[174]

131. Letter Rulings. Since the enactment of 332(c)(7)(B) of the Telecommunications Act, the Chairman and the Wireless Telecommunications Bureau have issued letter rulings interpreting these new provisions. On March 15, 1996, Chairman Hundt released a letter responding to a letter inquiry from the Mayor of the City of San Diego, California, requesting the Commission's opinion on: (1) whether the emissions of a certain PCS provider using GSM technology comply with the Commission's regulations concerning RF emissions; (2) whether the provisions of Section 332(c)(7)(B)(iv) apply to modulation interference as well as

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[167] *Id.* at 929.

[168] *Sprint Spectrum, L.P. v. City of Medina*, 924 F. Supp. 1036 (W.D. Wa. 1996).

[169] *Id.* at 1039-40.

[170] *Id.* at 1040.

[171] *Id.*

[172] *Id.*

[173] *Id.*

[174] *Id.*

radio interference; (3) to what extent has Congress preempted the City of San Diego from regulating the siting of wireless facilities on the basis of alleged interference to hearing aids, electric wheelchairs, pacemakers, automobile brakes and airbags and other devices; and (4) whether federal agencies have sole jurisdiction to regulate wireless technologies with respect to RF interference, modulation interference and low frequency electromagnetic field interference resulting from type-accepted equipment.[175] In his letter, the Chairman advised that: (1) the Commission does consider "modulation" part of the "emission" over which it has authority; (2) Section 332(c)(7)(B)(iv) of the Communications Act expressly preempts local government actions concerning the siting of wireless facilities that are based on the environmental effects of RF emissions if such facilities are in compliance with the Commission's RF guidelines; and (3) the Communications Act[176] provides the Commission with exclusive jurisdiction over RF interference but that, without the development of a formal record, it could not be decided definitively whether the Commission would distinguish between the terms "modulation interference" and/or "low frequency electromagnetic field interference."[177]

132. On June 14, 1996, the Wireless Telecommunications Bureau (WTB) released a letter concerning a resolution passed by the City Council of the City of Bedford, Texas, establishing a moratorium of approximately three months on the issuance of building permits for wireless facility siting.[178] The resolution clearly stated that the sole basis for enacting the moratoria was the city's concerns about the possible health risks associated with wireless facility siting.[179] In its letter, the WTB stated that such a moratorium is inconsistent with Section 332(c)(7)(B)(iv) of the Communications Act, since is it based solely on the environmental effects of RF, and would ban facilities that comply with the Commission's RF regulations.[180]

133. On January 17, 1997, the WTB released a letter responding to a letter inquiry from CTIA requesting the WTB's opinion as to whether certain factual scenarios would be consistent with the provisions of Sections 253 and 332(c)(7)(B)(iv) of the Communications

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[175] *See* Letter of Reed E. Hundt, Chairman of the FCC, to Honorable Susan Golding, Mayor of the City of San Diego, California, March 15, 1996 (*Hundt Letter*).

[176] 47 U.S.C. §§ 152(a), 301, 302(a), 303(f).

[177] *See Hundt Letter* at pp. 5-6.

[178] *See* Letter of Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, to the Honorable Richard Hurt, Mayor of Bedford, Texas, released June 14, 1996.

[179] *Id.*

[180] *Id.*

Act.[181] In its letter, the WTB found, *inter alia*, that state governments are not prevented from studying the effects of RF emissions but that siting decisions that are based upon the effects of RF emissions may be inconsistent with Section 332(c)(7)(B)(iv).[182] In addition, the WTB found that a hypothetical local zoning decision that appeared from the record to be based upon concerns over RF emissions may be inconsistent with Section 332(c)(7)(B)(iv) even if the local zoning board did not specifically say so in its decision.[183]

134. Chairman's Letters Concerning Moratoria. In addition, on February 20, 1997, the Chairman sent letters to 33 localities to confirm whether the localities had adopted moratoria on the siting of wireless facilities and seeking additional information about the moratoria. To date, at least 26 localities that have responded. Several of the localities to which these letters were sent have since enacted facilities siting ordinances and terminated their moratoria. A few of the localities stated that they never had moratoria in place. Some of the localities still have moratoria in effect, but state that they are working hard to complete appropriate ordinances, and in many instances state that they hope to finish the task before the scheduled termination of the moratorium. A few of the respondents objected to the Commission's interference in their local affairs.

C. Discussion

1. Definitional Issues

135. On August 1, 1996, we issued our *Report and Order* in ET Docket No. 93-62, wherein we revised our RF emissions guidelines in response to Congress' mandate in Section 704(b) of the Telecommunications Act. In the *Report and Order*, we first considered the implementation of Section 332(c)(7)(B)(iv) when we sought to determine the definition of the term "personal wireless service facilities."[184] Congress specifically defined this term in Section 332(c)(7)(C)(i) of the Communications Act to mean: "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services."[185] This Section does not provide specific authority for the Commission to preempt state or local regulations relating to RF emissions of communications services other than those specifically

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[181] *See* Letter to Thomas E. Wheeler, President and CEO, Cellular Telecommunications Industry Association, from Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, released January 17, 1997 (*CTIA Letter*).

[182] *Id.* at 2.

[183] *Id.* at 4.

[184] *See Report and Order* at ¶¶ 164-168.

[185] 47 U.S.C. § 332(c)(7)(C)(i).

defined in the statute.[186] Therefore, we declined to consider the preemption of state and local regulations relating to RF emissions involving broadcast or other communications facilities.[187]

136. The Electromagnetic Energy Association filed a petition for reconsideration of our *Report and Order* requesting that a broader RF preemption policy be adopted for all services. The preceding *MO&O* declined to take that approach or to consider granting relief from state and local regulations relating to RF emissions for facilities other than those of "personal wireless services" as set forth in Section 332(c)(7)(B)(iv) of the Communications Act.[188] Congress provided a clear definition of this term in Section 332(c)(7)(C)(i) of the Communications Act, and we find that definition is appropriate when determining whether to consider a request for relief filed under Section 332(c)(7)(B)(v) of the Communications Act.

137. As a preliminary matter, before considering procedures to review requests for relief under Section 332(c)(7)(B)(v) of the Communications Act, we seek comment concerning the definition of certain terms contained in this Section. For example, Congress did not define the terms "final action" or "failure to act" as they appear in Section 332(c)(7)(B)(v) of the Communications Act. In the *Conference Report*, however, "final action" is defined as final administrative action at the state or local government level so that a party can commence action under Section 332(c)(7)(B)(v) rather than waiting for the exhaustion of any independent remedy otherwise required.[189] We understand this to mean that, for example, a wireless provider could seek relief from the Commission from an adverse action of a local zoning board or commission while its independent appeal of that denial is pending before a local zoning board of appeals. We propose to adopt this definition of "final action" for the purpose of determining whether a state or local regulation is ripe for review under Section 332(c)(7)(B)(v) and we seek comment on this definition.

138. In addition, while Congress provided no specific definition of the term "failure to act," under Section 332(c)(7)(B)(ii) of the Communications Act, decisions regarding personal wireless service facilities siting are to be rendered in a reasonable period of time, taking into account the nature and scope of each request.[190] If a request for placement of a personal wireless service facility involves a zoning variance or a public hearing or comment process, the *Conference Report* states that the time period for rendering a decision will be the

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[186] *Id.* at ¶ 167.

[187] *See Report and Order* at ¶ 168.

[188] *See supra* at ¶ 88.

[189] *See Conference Report* at 209.

[190] *See* 47 U.S.C. § 332(c)(7)(B)(ii).

usual period under such circumstances.[191] Congress also stated that it did not intend to confer preferential treatment upon the personal wireless service industry in the processing of requests, or to subject that industry's requests to anything but the generally applicable time frames for zoning decisions.[192] Therefore, we propose to determine whether a state or local government has "failed to act" on a case-by-case basis taking into account various factors including how state and local governments typically process other facility siting requests and other RF-related actions by these governments. We seek comment on the average length of time it takes to issue various types of siting permits, such as building permits, special or conditional use permits, and zoning variances and whether additional time is needed when such permits are subject to a formal hearing.

139. Furthermore, we seek comment on whether the Commission should grant relief from a final action or failure to act based only partially on the environmental effects of RF emissions. We believe that state and local regulations do not have to be based entirely on the environmental effects of RF emissions in order for decisions to be reviewed by the Commission. The *Conference Report* stated that, in order to be reviewed pursuant to Section 337(c)(7)(B)(v) of the Communications Act, such regulations may be based either **directly or indirectly** on the environmental effects of RF emissions.[193] However, the *Conference Report* did not define the term "indirectly." We seek comment as to how we should define this term. We propose to examine such determinations on a case-by-case basis and to preempt, where applicable, only that portion of an action or failure to act that is based on RF emissions and to permit the adversely-affected party to seek relief from the remainder of the state or local regulation for which the Commission does not have authority to grant relief from the appropriate federal or state court. We may act in an advisory capacity in those areas where the Commission does not have specific preemption authority and provide the court with our expert opinion, as requested by the court or parties.

140. We tentatively conclude that we have the authority to review state and local regulations that appear to be based upon RF concerns but for which no formal justification is provided. For example, in response to the *CTIA Letter*, the WTB considered a hypothetical case where a county denied a wireless provider's application for a conditional use permit.[194] A significant portion of the record in the hypothetical local proceeding centered on the environmental effects of RF emissions.[195] Although the local government entity did not refer to these concerns in its decision denying the permit, it did reference community opposition

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[191] *Conference Report* at 208.

[192] *Id.*

[193] *Id.* at 208 (emphasis added).

[194] *See CTIA Letter* at 3.

[195] *Id.*

which was largely based upon these concerns.[196] The WTB advised that, under the circumstances, the decision's citation to community opposition as a ground for denial suggested that the decision may, in fact, have been based on environmental concerns.[197] To the extent that the evidence in such a hypothetical case established that the decision was based either directly or indirectly on such impermissible considerations and the evidence did not establish non-compliance with the Commission's regulations, the WTB believed that the decision would apparently be inconsistent with Section 332(c)(7)(B)(iv).[198] In addition, we note that, pursuant to Section 332(c)(7)(B)(iii) of the Communications Act, state and local decisions concerning the siting of personal wireless facilities are to be in writing and supported by substantial evidence contained in a written record.[199] Therefore, we seek comment on our tentative conclusion to grant relief to licensees or personal wireless service facilities from state and local regulations of personal wireless facilities based upon concerns of the environmental effects of RF emissions even if there is no formal justification provided for the decision if there is evidence to support the conclusion that concerns over RF emissions constituted the basis for the regulation.

141. Finally, we seek comment on whether our authority under Section 332(c)(7)(B)(v) to preempt state and local actions that are based on concerns over RF emissions extends to private entities' efforts to limit the placement, construction, and modification of personal wireless service facilities. We recognize that wireless providers, especially new services such as the "wireless local loop," may encounter restrictions by non-governmental entities, such as homeowner associations and private land covenants, that could prove to be an impediment to their ability to deploy their services. We seek to determine whether such entities would fall under the definition of "state or local government or any instrumentality thereof" as that term is used in Section 332(c)(7)(B)(v) of the Communications Act and whether decisions by private entities should be subject to Commission review.

2. Demonstration of RF Compliance

142. Section 332(c)(7)(B)(iv) of the Communications Act states that "[n]o state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions **to the extent that such facilities comply with the Commission's regulations concerning such emissions.**"[200] Neither the text of the Act nor the legislative

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196 *Id.*

197 *Id.*

198 *Id* at 3-4.

199 *See* 47 U.S.C. § 332(c)(7)(B)(iii).

200 47 U.S.C. § 332(c)(7)(B)(iv) (emphasis added).

history indicates to what extent localities are permitted to request that personal wireless service providers demonstrate compliance with our RF guidelines. LSGAC argues that Act preserves the authority of state and local governments to ensure that personal wireless service facilities comply with the Commission's RF emission regulations.[201] We recognize that it is reasonable for state and local governments to inquire as to whether a specific personal wireless service facility will comply with our RF emissions guidelines. LSGAC contends that local officials must be able to assure their constituents that compliance with the Commission's RF regulations will be monitored.[202] LSGAC recommends that the Commission adopt a mutually acceptable RF testing and documentation mechanism that providers and local authorities *may* use to demonstrate compliance with RF radiation limits.[203] We tentatively agree with LSGAC's recommendation, however, we believe that there should be some limit as to the type of information that a state or local authority may seek from a personal wireless service provider. The type of information may vary depending upon how the personal wireless service facility is classified under our environmental rules. Under the procedural guidelines adopted in the *Report and Order* and modified in the *MO&O* in this proceeding, proposed wireless facilities may be considered either: (1) environmental actions requiring the submission of an Environmental Assessment (EA); (2) actions that do not require such an assessment but nevertheless require routine RF emissions evaluation by the Commission; or (3) actions that are categorically excluded from routine RF emissions evaluation based upon their height above ground level or their low operating power. Facilities that are categorically excluded must comply with the substantive RF emissions guidelines; however, because they are extremely unlikely to cause routine exposure that exceeds the guidelines, applicants for such facilities are not required to perform any emissions evaluation as a condition of license, unless specifically ordered to do so by the Commission. Given these environmental classifications, we seek comment on two alternative showings that would be permissible for local and state governments to request personal wireless providers submit as part of the local approval process.

143. Under the first alternative, we propose a more limited showing. For personal wireless service facilities that were categorically excluded from routine Commission evaluation, state and local authorities would only be allowed to request that the personal wireless provider certify in writing that its proposed facility will comply with the Commission's RF emissions guidelines. In the case of facilities that were not categorically excluded, state or local authorities would be limited to requesting copies of any and all documents related to RF emissions submitted to the Commission as part of the licensing process. We seek comment on this limited showing and how a state or local authority would be able to seek relief from a licensee that falsely certifies its facility complies or will comply with our RF emissions guidelines.

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[201] *See* LSGAC Letter at 1.

[202] *Id.*

[203] *Id.* at 2.

144. Alternatively, we ask for comment on whether to adopt a more detailed showing. We believe, however, that this alternative can be workable only if we adopt uniform standards for such a demonstration that would be regarded as sufficient by all state and local governments for demonstrating compliance with the RF guidelines. We propose, once again, for facilities that were not categorically excluded, that state or local authorities would be limited to requesting copies of any and all documents related to RF emissions submitted to the Commission as part of the licensing process. For facilities that were categorically excluded, we propose that the state and local governments be permitted to request that the personal wireless service provider submit a demonstration of compliance. We ask for comments on the criteria for such a demonstration of compliance. We seek to develop a showing that would impose a minimal burden on service providers, while satisfying legitimate state and local government interests. In addition, we seek to determine which party should be required to pay for the preparation of the demonstration of compliance. LSGAC contends that local taxpayers should not bear the costs of investigations taken by state and local governments to determine compliance with the Commission's RF regulations.[204]

145. While this proceeding is pending, we believe that it would be beneficial to personal wireless service providers and state and local governments for us to provide some policy guidance as to what information we believe a carrier should be obligated to provide to demonstrate to localities that its "facilities comply with the Commission's regulations concerning such (RF) emissions" as stated in Section 332(c)(7)(B)(iv) of the Communications Act. We therefore are providing a non-binding policy statement as to the circumstances in which we would be less likely to find such information requests to be inconsistent with Section 332(c)(7)(B)(iv). We believe that such a statement will provide much needed guidance to state and local governments on the issue of RF compliance and would greatly expedite the siting of personal wireless service facilities pending our adoption of final rules herein. We are concerned that state and local governments may delay the siting of facilities based upon concerns about the effects of RF emissions and a carrier's compliance with our RF guidelines. As the record in the RF emissions proceeding indicated, several states have been adopting their own RF regulations in an effort to resolve these concerns.[205] As a result of such actions, wireless facilities that otherwise comply with federal RF emissions guidelines are experiencing delays as state and local officials search for methods to assess such compliance. Conversely, personal wireless service providers cite to our RF rules and conclude that they should not be required to submit any information about RF compliance as part of the local approval process. Therefore, we believe that providing guidance as to the types of RF information a state or local government may request will provide both sides a much-needed measure of certainty because state and local governments would know certain types of RF information they could request in this interim period without concern that their actions would be subsequently preempted by the Commission. Similarly, personal wireless

[204] *See* LSGAC Letter at 2.

[205] *See* Ameritech Mobile Communications, Inc.'s Reply in ET Docket No. 93-62, October 23, 1996, as well as David Fichtenberg's Opposition, October 8, 1996.

service providers would understand what we believe is reasonable for state and local governments to request.

146. We believe that, pending adoption of final rules, we would not preempt state and local government requests that personal wireless service providers submit, as part of their application to place, construct, or modify a personal wireless service facility, the more detailed demonstration of RF compliance set forth in our second alternative above. However, at the present time, we believe that this level of information should be the most that a state or local government should be permitted to request and we would be likely to find that information requests that exceed this level are inconsistent with Section 332(c)(7)(B)(iv) of the Communications Act. The type of demonstration that could be requested by the state or local government would depend on how the facility was classified under the Commission's environmental categories. For those facilities that are not categorically excluded from routine environmental processing, as set forth in Section 1.1306 of the rules, we would be less likely to preempt state or local authorities that simply request copies of all environmental documents, such as the Environmental Assessment or evaluation, that were submitted to the Commission as part of the licensing process. For those facilities that were categorically excluded, we would be less likely to preempt state and local authorities that simply request that the personal wireless service provider submit a uniform demonstration of compliance with the Commission's RF guidelines. We believe that a uniform demonstration of compliance should consist of a written statement signed by the personal wireless service provider or its representative and should conform to our rules on truthfulness of written statements, subscription and verification.[206] We believe that the following information should also be contained in the uniform demonstration of RF compliance to be filed for facilities that were categorically excluded:

> (1) A statement that the proposed or existing transmitting facility does or will comply with FCC radio frequency emission guidelines for ***both*** general population/uncontrolled exposures and occupational/controlled exposures as defined in the rules.
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> (2) A statement or explanation as to how the personal wireless service provider determined that the transmitting facility will comply, e.g., by calculational methods, by computer simulations, by actual field measurements, etc. Actual values for predicted exposure should be provided to further support the statement. An exhaustive record of ***all*** possible exposure locations is not necessary, but, for example, the "worst case" exposure value in an accessible area could be mentioned as showing that no exposures would ever be greater than that level. Reference should be given to the actual FCC exposure limit or limits relevant for the particular transmitting site.

[206] *See* 47 C.F.R. §§ 1.17 and 1.52.

(3) An explanation as to what, if any, restrictions on access to certain areas will be maintained to ensure compliance with the public or occupational exposure limits. This includes control procedures that are established for workers who may be exposed as a result of maintenance or other tasks related to their jobs.

(4) A statement as to whether other significant transmitting sources are located at or near the transmitting site, and, if required by the rules, whether their RF emissions were considered in determining compliance at the transmitting site.

147. We stress that the above-outlined policies concerning the demonstration of RF compliance are non-binding and are merely provided as guidance pending the final outcome of this proceeding. Should a state or local government request that a personal wireless service provider submit RF information that is consistent with our above-outlined policies, we would be less likely to find its action to be inconsistent with Section 332(c)(7)(B)(iv) of the Communications Act. However, we stress that we will continue to evaluate each request for relief that is filed concerning state and local RF regulations and we will determine, on a case-by-case basis, whether such regulations are consistent with Section 332(c)(7)(B)(iv).

148. In addition, we seek comment as to whether the more detailed showing that we proposed as one of the two alternatives above should include the above outlined criteria. We believe that the criteria set forth above should provide sufficient information to constitute the more detailed showing of RF compliance while imposing a minimum burden on personal wireless service providers. We seek to determine whether additional information, not currently included above, is necessary to demonstrate compliance or whether any of the above-outlined elements are too broad or unnecessary.

3. General Procedures for Reviewing Requests for Relief

149. We seek comment on the following proposed procedures for reviewing requests for relief filed under Section 332(c)(7)(B)(v) of the Communications Act. We propose that parties seeking relief file a request for declaratory ruling pursuant to Section 1.2 of the Commission's Rules, asking that the Commission review the state or local regulation and grant appropriate relief.[207] Sections 1.45 through 1.49 of the Commission's Rules, concerning the filing of pleadings and responsive pleadings, shall be applicable with respect to such

[207] *See* 47 C.F.R. § 1.2.

requests.[208] We propose that a copy of the request be served on the state or local authority that took the action or failed to take the action against which relief is sought.[209]

150. We also seek comment on the following method for providing comment on such requests. We seek comment on whether we should limit participation in the proceeding to only those interested parties able to demonstrate standing to participate in the proceeding. Section 332(c)(7)(B)(v) of the Communications Act states that requests for relief may be filed by any "person adversely affected."[210] We seek comment on the definition of "person adversely affected." and how we should determine whether an entity has standing to participate in the preemption proceeding. We find that limiting the number of parties participating in the proceeding to only those that are "adversely affected" will reduce the possibility of frivolous filings, and expedite the processing of preemption requests. We seek comment on this proposed procedure.

4. Rebuttable Presumption of Compliance

151. We tentatively conclude that we should adopt a rebuttable presumption that would operate when reviewing requests for relief from state and local actions under Section 332(c)(7)(B)(v). Under such a procedure, we would presume that personal wireless facilities will comply with our RF emissions guidelines. The state or local government would have the burden of overcoming this presumption by demonstrating that the facility in question does not or will not, in fact, comply with our RF guidelines.[211] We believe that such a presumption would be consistent with Commission practice. Generally, we presume that licensees are in compliance with our rules unless presented with evidence to the contrary.[212] In addition,

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[208] *See* 47 C.F.R. §§ 1.45 - 1.49.

[209] *See* Section 1.47 of the Commission's Rules concerning service of documents and proof of service. 47 C.F.R. § 1.47.

[210] 47 U.S.C. § 332(c)(7)(B)(v).

[211] The Commission's RF guidelines and procedures are set forth in Sections 1.1307 of the rules. 47 C.F.R. § 1.1307.

[212] *See* Improvement of the Quality of AM Broadcast Service, MM Docket No. 88-376, *First Report and Order*, 4 FCC Rcd 3835 (1989) (*AM Improvement First Report and Order*) (AM licensees are presumed to be in compliance with emission limits); Fairness Doctrine Obligations of Broadcast Licensees, Gen. Docket No. 84-292, *Report*, 102 FCC 2d 142 (1985) (broadcast licensees are presumed to be in compliance with requirements of the Fairness Doctrine); Instructional Television Fixed Service, MM Docket No. 83-253, *Second Report and Order*, 101 FCC 2d 49 (1985) (ITFS licensees presumed to be held responsible for compliance with all Commission rules); Revision of Programming and Commercial Policies for Commercial Television Service, MM Docket No. 83-670, *Report and Order*, 98 FCC 2d 1075 (1984) (broadcast licensees are presumed at the time of an uncontested license renewal to have complied with the requirement that they address community issues and provide responsive programming).

applicants for personal wireless services must certify in their applications that they will comply with all of the Commission's rules, including the RF guidelines. With respect to providers of "unlicensed wireless services," we tentatively conclude that it would be consistent with Commission practice to presume that they are in compliance with our RF guidelines because such providers must employ type-accepted equipment that complies with our RF guidelines.[213] Therefore, we seek comment on whether we should presume that personal wireless facilities are in compliance with our RF guidelines, and whether we should grant relief from state or local actions that prevent the construction of such facilities when such actions are based on RF concerns. We remain sensitive, of course, to the concerns of state and local governments and we encourage state and local governments to submit comments explaining how such a presumption might affect them. We encourage state and local governments, including LSGAC, to file comments on the NPRM. We specifically request comment in the interest of minimizing any potential adverse affect the establishment of a rebuttable presumption may have on state and local authorities' ability to ensure the health and safety of their citizens.

152. We have utilized a rebuttable presumption in other contexts similar to this one. In our proceeding concerning preemption of local zoning regulation of satellite earth stations, we adopted a rebuttal presumption that state and local regulation of small antennas is presumed unreasonable.[214] If the state or local government objects to a request to preempt its action, then it is permitted to rebut the presumption by demonstrating the necessity of the regulation for health and safety reasons.[215] In the rulemaking we conducted concerning access to telecommunications equipment and services by persons with disabilities, we adopted a rebuttable presumption that, by a date certain, all workplace non-common area telephones would be hearing aid compatible.[216] We found that the rebuttable presumption approach would relieve employers of the need to field-test and identify whether their telephones are hearing aid compatible.[217] This presumption can be rebutted, on a telephone-by-telephone basis, by any person legitimately on the premises who identifies a particular telephone as

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[213] The Commission's equipment authorization and type acceptance rules for transmitting equipment are generally contained in Sections 2.801 through 2.1065 of the rules. 47 C.F.R. §§ 2.801- 2.1065. Separate type acceptance rules for transmitting equipment are also contained in each part of the Commission's rules applicable to the type of service being authorized. *See, e.g.*, 47 C.F.R. §§ 22.120 and 24.51.

[214] *See* 47 C.F.R. § 25.104(b); Preemption of Local Zoning Regulations of Satellite Earth Stations, IB Docket No. 95-59, *Report and Order and Notice of Proposed Rulemaking*, 11 FCC Rcd 5809, ¶ 31 (1996) (*Earth Station Preemption Report and Order and NPRM*); *recon. pending.*

[215] *Id.*

[216] *See* Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87-124, *Report and Order*, 11 FCC Rcd 8249 (1996).

[217] *Id.* at ¶ 37.

non-hearing aid compatible.[218] Finally, in our proceeding concerning the improvement of the quality of the AM broadcast service, we adopted a rebuttable presumption of compliance with our newly-adopted emission limits and we did not require that AM station licensees conduct periodic emission measurements.[219] However, this presumption could be rebutted by technical evidence (*e.g.*, spectrum analyzer measurement results) of non-compliance.[220] In each of these cases, we adopted a presumption and then permitted the presumption to be rebutted when presented with contrary evidence. We seek comment as to whether we should adopt a similar rebuttable presumption for consideration of preemption requests filed pursuant to Section 332(c)(7)(B)(v) of the Communications Act.

5. Operation of Presumption

153. We recognize that some wireless services are licensed on a geographic area basis only and that our wireless rules do not provide for the licensing of individual tower or antenna facilities.[221] There may be a concern that individual facilities do not, in fact, comply with our RF guidelines. Moreover, certain personal wireless services may be provided via low-power, unlicensed devices. Therefore, we believe that it is appropriate to permit interested parties to rebut the presumption of compliance. We seek comment on the procedures we should adopt to permit the presentation of such a rebuttal showing. We propose limiting the consideration of such presentations to only those parties that are able to demonstrate that they are "interested parties" or that otherwise demonstrate that they have standing to participate in the proceeding. We propose that, in order to rebut the presumption, interested parties would bear the initial burden of proof and would be required to demonstrate that a particular facility does not in fact comply with our RF limits. Such a demonstration of noncompliance could include, but would not be limited to: (1) the interested party demonstrating that the personal wireless service provider is or would be operating without a valid Commission authorization; (2) the interested party submitting an Environmental Assessment with detailed RF measurements or calculations that demonstrates that the Commission's RF exposure guidelines for controlled or uncontrolled environments is or would be exceeded in the disputed area, or (3) the interested party demonstrating that the licensee's operation otherwise may not comply with the Commission's RF exposure guidelines. The Commission shall examine this showing and determine whether the interested party has made a *prima facie* case for noncompliance. If the interested party fails to make a *prima facie* case for noncompliance, then we would preempt the state or local regulation. If a *prima facie* case for noncompliance is made, then the burden of proof would shift to the personal wireless provider to demonstrate that its facility would comply with the RF limits. Should we find

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[218] *Id.* at ¶ 35.

[219] *See AM Improvement First Report and Order*, at ¶ 37.

[220] *Id.*

[221] *See, e.g.*, Parts 22 and 24 of the rules. 47 C.F.R. Parts 22 and 24.

that the facility in question does not comply with our RF limits or should the personal wireless service provider fail to respond, we would not grant relief from the state or local regulation and we would initiate an enforcement proceeding to ensure compliance with our RF guidelines. If, after examination of the personal wireless service provider's response, we find that the facility does comply with our RF limits, then we would preempt the state or local regulation. Should the personal wireless provider modify its facility to comply with the RF emissions guidelines, we propose allowing the provider to file subsequent requests for relief. In addition, we tentatively propose that both the wireless provider and the interested parties be permitted to seek review of final Commission and delegated authority actions taken pursuant to Section 332(c)(7)(B)(v) of the Communications Act via the review procedures set forth in our rules and the Communications Act.[222] We seek comment on these procedures.

154. We believe that allowing interested parties to rebut the presumption of compliance will provide a balanced method for resolving Section 332(c)(7)(B)(v) proceedings. We seek comment as to whether such a procedure is appropriate and whether there are other methods an interested party might employ to demonstrate its contention that a personal wireless facility does not or will not comply with the RF emissions guidelines.

D. Conclusion

155. We believe that the procedures we propose herein provide a fair and balanced approach to reviewing requests for relief from state and local regulations based on the effects of RF emissions filed pursuant to Section 332(c)(7)(B)(v) of the Communications Act. These procedures, if adopted, would provide interested parties with the opportunity to present their views to the Commission and for the Commission to carefully review requests for relief in an expedited fashion. We view this proceeding as another important step in our ongoing efforts to assist in the resolution of state and local disputes concerning the siting of personal wireless service facilities and to provide expert guidance and input on these important matters.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

156. Appendix C contains a Revised Final Regulatory Flexibility Analysis with respect to the *Second Memorandum Opinion and Order* in ET Docket No. 93-62. An Initial Regulatory Flexibility Analysis for the *Notice of Proposed Rulemaking* in WT Docket No. 97-192 is contained in Appendix D. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared the Initial Regulatory Flexibility Analysis of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the Initial Regulatory Flexibility Analysis. In order to

[222] *See, e.g.*, 47 C.F.R. § 1.106 § 1.115 and 47 U.S.C. § 402.

fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis we ask a number of questions in our Initial Regulatory Flexibility Analysis regarding the prevalence of small businesses that may be impacted by the proposed procedures. Comments on the Initial Regulatory Flexibility Analysis must be filed in accordance with the same filing deadlines as comments on the *Notice of Proposed Rulemaking*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a).

B. *Ex Parte* Rules -- Non-Restricted Proceedings

157. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1201, 1203, and 1.1206(a).

C. Comment Dates

158. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments to the *Notice of Proposed Rule Making* on or before **October 9, 1997,** and reply comments on or before **October 24, 1997.** To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

159. Parties are encouraged to submit comments and reply comments on diskette for possible inclusion on the Commission's Internet site so that copies of these documents may be obtained electronically. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements presented above. Parties submitting diskettes should submit them to Shaun A. Maher, Esq., Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, 2100 M Street, N.W., 7th Floor - Room 93, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using Word Perfect 5.1 for Windows software. The diskette should be submitted in "read only" mode, and should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comment) and date of submission.

D. Initial Paperwork Reduction Act of 1995 Analysis

160. The *Notice of Proposed Rule Making* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this *Notice of Proposed Rule Making*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this *Notice of Proposed Rule Making*; OMB comments are due on or before 60 days after the publication in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

161. Written comments by the public on the proposed and/or modified information collections are due (30 days after publication in the Federal Register). Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after the publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to both of the following: Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet at fain_t@al.eop.gov. For additional information regarding the information collections contained herein, contact Judy Boley above.

E. Ordering Clauses

162. Pursuant to the authority contained in Sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), 303(r) and 332(c)(7), and Section 704 of the Telecommunications Act of 1996, IT IS ORDERED THAT, effective 30 days after publication in the Federal Register, Parts 1, 2, 26 and 97 of the Commission's Rules and Regulations, 47 CFR Parts 1, 2, 26, and 97, ARE AMENDED as specified in Appendix A.

163. IT IS FURTHER ORDERED THAT, to the extent discussed above and as reflected in the new rules contained in Appendix A, certain aspects of the various petitions and motions filed in ET Docket No. 93-62 ARE GRANTED. In all other aspects except those previously addressed in the *First Memorandum Opinion and Order* in this proceeding,

IT IS ORDERED THAT the petitions and motions filed in ET Docket No. 93-62 ARE DENIED.

164. IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), 303(r), and 332(c)(7), a NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

165. IT IS FURTHER ORDERED that the petition for rulemaking of the Cellular Telecommunications Industry Association, filed December 22, 1994 (RM-8577), is hereby DISMISSED.

F. Further Information

166. For further information concerning the *Second Memorandum Opinion and Order*, contact Robert Cleveland or the Commission's RF safety program at (202) 418-2464. Address: Office of Engineering and Technology, Federal Communications Commission, Washington, D.C. 20554. Internet e-mail address: rfsafety@fcc.gov.

167. For further information concerning the *Notice of Proposed Rulemaking*, contact Shaun A. Maher, Esq. at (202) 418-7240, internet: smaher@fcc.gov, Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A: RULE CHANGES

Title 47 of the Code of Federal Regulations, parts 1, 2, and 97, are amended as follows:

Part 1 - PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154, 303 and 309(j), unless otherwise noted, and Section 704 of the Telecommunications Act of 1996.

2. Section 1.1307 is amended by revising paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) and by adding paragraph (b)(5) to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) The appropriate exposure limits in § 1.1310 and § 2.1093 are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 or § 2.1093 (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in Table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of Table 1, "building-mounted antennas" means antennas mounted in or on a building structure that is occupied as a workplace or residence. The term "power" in column 2 of Table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and the Specialized Mobile Radio Service, part 90 of this chapter, the phrase "total power of all channels" in column 2 of Table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying the criteria of Table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1: TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

SERVICE (TITLE 47 CFR RULE PART)	EVALUATION REQUIRED IF:
Experimental Radio Services (part 5)	power > 100 W ERP (164 W EIRP)
Multipoint Distribution Service (subpart K of part 21)	non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP building-mounted antennas: power > 1640 W EIRP
Paging and Radiotelephone Service (subpart E of part 22)	non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP) building-mounted antennas: power > 1000 W ERP (1640 W EIRP)
Cellular Radiotelephone Service (subpart H of part 22)	non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP) building-mounted antennas: total power of all channels > 1000 W ERP (1640 W EIRP)

TABLE 1 (cont.)

SERVICE (TITLE 47 CFR RULE PART)	EVALUATION REQUIRED IF:
Personal Communications Services (part 24)	(1) Narrowband PCS (subpart D): non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP) building-mounted antennas: total power of all channels > 1000 W ERP (1640 W EIRP) (2) Broadband PCS (subpart E): non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 2000 W ERP (3280 W EIRP) building-mounted antennas: total power of all channels > 2000 W ERP (3280 W EIRP)
Satellite Communications (part 25)	all included
General Wireless Communications Service (part 26)	total power of all channels > 1640 W EIRP
Wireless Communications Service (part 27)	total power of all channels > 1640 W EIRP
Radio Broadcast Services (part 73)	all included

TABLE 1 (cont.)

SERVICE (TITLE 47 CFR RULE PART)	EVALUATION REQUIRED IF:
Experimental, auxiliary, and special broadcast and other program distributional services (part 74)	subparts A, G, L: power > 100 W ERP subpart I: non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP building-mounted antennas: power > 1640 W EIRP
Stations in the Maritime Services (part 80)	ship earth stations only
Private Land Mobile Radio Services Paging Operations (part 90)	non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP) building-mounted antennas: power > 1000 W ERP (1640 W EIRP)
Private Land Mobile Radio Services Specialized Mobile Radio (part 90)	non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP) building-mounted antennas: total power of all channels > 1000 W ERP (1640 W EIRP)